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*Representing the United States of America*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT CAPUTO,

Defendant.

Case No. 2:17-cr-78-KJD-PAL

UNITED STATES' SENTENCING  
MEMORANDUM AS TO  
CLINTON TAYLOR CAPUTO

The United States of America, through the United States' Attorney, Nicholas A. Trutanich, and the undersigned Assistant United States Attorney, Daniel J. Cowhig, submits this sentencing memorandum as to defendant Robert Caputo.

The United States respectfully requests this Honorable Court sentence defendant Caputo to a term of custody equal to the low end of the guideline range corresponding to the offense level determined by the Court, followed by a three-year term of supervised release on the conditions recommended by the United States Probation Office. The United States respectfully requests the Court not impose a fine, but instead enter a finding that defendant Caputo was

1 responsible for \$3,368,857.08 in losses suffered by the victims and order defendant Caputo to  
2 pay restitution in that amount to the victims of the fraud scheme, to be named in the judgment  
3 at the time of sentencing, to be held jointly and severally liable with any codefendants.

4 The United States further respectfully requests this Honorable Court impose an in  
5 personam criminal forfeiture money judgment of \$27,128.20, not to be held jointly and  
6 severally liable with any codefendants and with the collected money judgment amount between  
7 all codefendants not to exceed \$3,300,000, consistent with the proposed final order of  
8 forfeiture.<sup>1</sup>

### 9 I. Brief Summary of Factual and Procedural Context

10 Defendant Robert Caputo is pending sentencing after having waived his right to  
11 indictment by a grand jury and having pleaded guilty to an information alleging one count of  
12 Conspiracy to Commit Mail Fraud and Wire Fraud in violation of 18 USC § 1349. ECF 4  
13 (Criminal Information); ECF 7 (Plea Agreement); ECF 9 (Minutes).

14 Defendant Caputo and his coconspirators participated in a fraudulent telemarketing  
15 scheme to cheat people who owned timeshares out of money by promising to sell their  
16 timeshares in return for the owners paying a portion of the closing costs associated with the  
17 purported sales up front. There were no buyers. There were no sales. Using this scheme, the  
18 conspirators defrauded more than 1,000 victims, many of them elderly, from October 2010  
19 through April 2012. Defendant Caputo acted variously as both a fronter and a closer in the  
20 scheme from January 2011 through November 2011. In that role, defendant Caputo was  
21 directly responsible for \$271,282.00 in losses to the victims.

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24 <sup>1</sup> To comply with Honeycutt v. United States, 137 S.Ct. 1626 (2017), the United States reduced  
the in personam criminal forfeiture money judgment amount to \$27,128.20.

1 The defendant's Plea Agreement, ECF 7 at 5-10, and the Presentence Investigation  
 2 Report prepared by the United States Probation Office on April 19, 2018, PSR paras. 8-21,  
 3 include further descriptions of the offense conduct.

4 The Court released defendant Caputo on a personal recognizance bond pending  
 5 sentencing. ECF 8; ECF 9. The Pretrial Services Office for this District has not reported any  
 6 significant violation of bond conditions by defendant Caputo.

## 7 **II. Offense Level Computations**

8 In the plea agreement, the parties stipulated the Base Offense Level under USSG  
 9 § 2B1.1(a)(1) as 7, with 10 additional levels based on a loss greater than \$150,000 under  
 10 USSG § 2B1.1(b)(1)(F), and 2 additional levels based on more than 10 victims under USSG  
 11 § 2B1.1(b)(2)(A), resulting in an adjusted offense level of 19. ECF 7 at 11:11-15.

12 Based on defendant Caputo's timely plea of guilty,<sup>2</sup> the United States motions the Court  
 13 for the application of USSG §§ 3E1.1(a) and (b), affording a 2-level reduction under USSG  
 14 § 3E1.1(a) and a further 1-level reduction under USSG § 3E1.1(b). With these adjustments, the  
 15 final total offense level stipulated by the parties was 18. *Id.* at 11:16-18.

16 The United States Probation Office applied the same offense level computations. PSR at  
 17 paras. 26-36.

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 23 <sup>2</sup> The United States conditioned its commitment to recommend reductions for acceptance of  
 24 responsibility under USSG §§ 3E1.1(a) and (b). *See* ECF 7 at 11:20-12:13. The United States  
 believes the defendant has met the conditions set out in the plea agreement.

### III. Criminal History Computation

The USPO calculated defendant Caputo's total Criminal History Score as 1. PSR at paras. 38-43. The USPO calculated defendant Caputo's Criminal History Category as I. PSR at paras. 44. The United States concurs with those calculations.

### IV. The Parties' Positions Regarding Sentence under the Plea Agreement

Under the Plea Agreement, "the United States may argue for any sentence within the Sentencing Guidelines range corresponding to the offense level determined by the court"<sup>3</sup> and "the defendant may request a sentence below the Sentencing Guidelines range determined by the court pursuant to 18 USC § 3553." ECF 7 at 14:13-20.

### V. Applicable Law

Under Title 18, United States Code section 3553(a), the factors to be considered when imposing a sentence include both "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 USC § 3553(a)(1).

Title 18, United States Code section 3553(a) mandates that "the Court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth" in 18 USC § 3553(a)(2). Those purposes include "the need for the sentence imposed (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or

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<sup>3</sup> The United States conditioned its commitment to restrict its sentencing argument to this position. ECF 7 at 14:17-20. The United States believes the defendant has met the conditions set out in the plea agreement.

1 vocational training, medical care, or other correctional treatment in the most effective manner.”  
2 18 USC § 3553(a)(2).

3 The law also requires the Court to consider “the kinds of sentences available,” 18 USC  
4 § 3553(a)(3); “the kinds of sentence and the sentencing range established ... set forth in the  
5 guidelines ... issued by the Sentencing Commission pursuant to” Title 28, United States Code  
6 section 994(a)(1), 18 USC § 3553(a)(4), and; pertinent policy statements issued by the  
7 sentencing Commission, 18 USC § 3553(a)(5).

8 Section 3553(a) also requires the Court to consider “the need to avoid unwarranted  
9 sentence disparities among defendants with similar records who have been found guilty of  
10 similar conduct.” 18 USC § 3553(a)(6).

11 Finally, section 3553(a) requires the Court to consider “the need to provide restitution to  
12 any victims of the offense.” 18 USC § 3553(a)(7).

### 13 **VI. United States’ Sentencing Recommendation and Rationale**

14 The United States respectfully requests this Honorable Court sentence defendant Caputo  
15 to a term of custody equal to the low end of the guideline range corresponding to the offense  
16 level determined by the Court, “a sentence sufficient, but not greater than necessary, to comply  
17 with the purposes set forth” in Title 18, United States Code section 3553(a)(2).

18 Taken as a whole, the nature and circumstances of the offense present neither  
19 aggravating nor mitigating factors that would militate for an upward or downward variance or  
20 departure from the guideline range. PSR at paras. 82-83; *see* 18 USC §§ 3553(a)(3) – (5). Here,  
21 imposition of a guideline range sentence would adequately address “the need to avoid  
22 unwarranted sentence disparities among defendants with similar records who have been found  
23 guilty of similar conduct.” 18 USC § 3553(a)(6).

1 A period of confinement within the guideline range corresponding to the offense level  
 2 determined by the Court is necessary “to reflect the seriousness of the offense, to promote  
 3 respect for the law, and to provide just punishment for the offense.” 18 U.S.C. 3553(a)(2)(A).  
 4 Defendant Caputo participated in an extensive and long-running fraud scheme that preyed  
 5 upon victims across the United States. The scheme turned on the ability of the conspirators to  
 6 gain and abuse the trust and goodwill of their victims, inflicting more than a simple financial  
 7 loss. Defendant Caputo and his fellow conspirators defrauded more than 1,000 victims, many  
 8 of them elderly, of more than \$3,300,000. Acting variously as both a fronter and a closer in the  
 9 scheme from January through November of 2011, defendant Caputo was directly responsible  
 10 for \$271,282.00 in losses to the victims. Defendant Caputo’s role in the scheme required that he  
 11 personally commit repeated, deliberate acts of deception with the clear purpose of obtaining  
 12 then betraying the confidence of the victims for his own financial gain. The guidelines reflect  
 13 the nature and characteristics of the scheme and defendant Caputo’s role in it.

14 Defendant Caputo’s acceptance of responsibility, demonstrated principally in his entry  
 15 of a plea acknowledging the scheme and his role in it, indicates that a term of custody equal to  
 16 the low end of the guideline range corresponding to the offense level determined by the Court is  
 17 appropriate. Such a sentence would “afford adequate deterrence to criminal conduct,” 18 USC  
 18 § 3553(a)(2)(C), and be sufficient to “protect the public from further crimes of the defendant,”  
 19 18 USC § 3553(a)(2)(D).

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11 NICHOLAS A. TRUTANICH,  
12 United States Attorney

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14 DANIEL J. COWHIG  
Assistant United States Attorney

I, Daniel J. Cowhig, certify that the following individual was served with a copy of the UNITED STATES' SENTENCING MEMORANDUM on this date by the Electronic Case

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//s//  
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